

**Remarks**

The Examiner has acknowledged the request for continued examination and has entered the submission filed on August 16<sup>th</sup>, 2007.

Claims 16 through 19, 21 through 24, and 26 through 30 stand rejected under 35 USC 102(a) as being anticipated by EP '940. Claims 20 and 25 stand rejected under 35 USC 103(a) as being unpatentable over EP '940. In the response to arguments section of the Office Action on page 6, the Examiner states:

"In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies are taught by the reference as explained in the reference. The applicant refers to figure 4 and states that the particles of polymers are being claimed. The examiner recognizes that and maintains the current rejection in that the reference discloses polymers of particles with individual outer surfaces being coated (i.e. covered) by the topsheet. If the topsheet covers the entire structure as taught, then the individual outer surfaces are automatically covered"

The Examiner has therefore clearly interpreted the recitation of "a coating deposited on individual outer surfaces of individual super-absorbing polymer particles" to read on the top sheet of prior art.

In response thereto, the Applicant scheduled a telephone interview with the examiner in order to explain his position with regard to the claim

interpretation of the word "coating". The interview was conducted at 6 am Eastern Standard Time on Monday November 5<sup>th</sup>. During the telephone interview, the Agent for the Applicant argued to the Examiner that the Applicant is entitled to be his own lexicographer and to define terms for use in the claims in any reasonable manner which he chooses. Although the USPTO interprets claims giving the broadest possible language interpretation for the terms used, claim interpretation cannot result in a direct contradiction between the meaning given to the claim and the clear meaning of the terms in the claim as defined in the specification. The Applicant argued that this was precisely the case with respect to the word "coating", since the word was used over thirty times in the specification and none of those usages could provide any possible indication for any interpretation other than that of individual coatings directly deposited on the individual particles themselves. The rejection on the basis of a top sheet was therefore clearly incorrect because there was no indication whatsoever than an attempt was being made to claim a top sheet through recitation of the word "coating". The Applicant also pointed out to the Examiner that there are two other cases pending before the Examiner with similar problems of claim interpretation. One case involved use of the word "separation" which the Examiner had interpreted as "gap" although the clear meaning in the specification was "distance from". In another case, a diaper recitation describes structural relationships among the claimed elements "in an applied state" was rejected on the basis of prior art with the position taken by the Examiner that "in applied state" was consistent with a state in which the hip belt is not attached such that the diaper falls off the user. The Applicant therefore stressed that the issue of the influence of the specification on claim interpretation was of central

importance to the prosecution of a plurality of cases in front of the Examiner.

As a result of subsequent discussion, the Applicant concluded that a positive conclusion was unlikely, since the Examiner remained unconvinced the specification clearly excluded reading of the "coating" on a top sheet. The Applicant therefore suggested that the interview be terminated and that the Applicant discuss the situation with the Examiner's supervisor in an attempt to gain Supervisor agreement and with the hope that the Supervisor could more properly explain the position of the Applicant to the Examiner than the Applicant was able to do.

The Applicant therefore sent an e-mail to the Supervisor of the Examiner requesting review of the claim interpretation issue concerning the word "coating". The Supervisor of the Examiner promptly responded by return e-mail stating that she had examined the case and agreed with the Applicant that the Examiner had improperly interpreted the word "coating" as a top sheet. The Examiner assured the Applicant that subsequent examination would be taken with the word "coating" interpreted in the way defined in the specification and not as a top sheet.

In view of this situation, the Applicant believes no amendment to independent claim 16 is necessary at this time, since the proper claim interpretation of "coating" distinguishes the claim from the top sheet of prior art, and the EP '940 reference therefore fails to anticipate. The dependent claims of record inherit the limitations of the base claim and are therefore similarly distinguished from the cited prior art for the same reasons.

The Applicant therefore respectfully requests passage to issuance or issuance of a new, non final Office Action, in which proper claim interpretation is utilized.

Respectfully submitted,

Paul Vincent

Dr. Paul Vincent

Registration number 37,461

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Date

Dreiss, Fuhlendorf, Steinle & Becker  
Patentanwälte  
Postfach 10 37 62  
D-70032 Stuttgart, Germany  
Telephone +49-711-24 89 38-0  
Fax +49-711-24 89 38-99